



## Senate

General Assembly

**File No. 510**

*January Session, 2007*

Substitute Senate Bill No. 41

*Senate, April 17, 2007*

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

### ***AN ACT CONCERNING CLEAN CONTRACTING STANDARDS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective from passage*) For purposes of sections 2 to  
2       12, inclusive, and sections 14, 16, 17 and 20 of this act:

3       (1) "Procurement" means contracting for, buying, purchasing,  
4       renting, leasing or otherwise acquiring or disposing of, any supplies,  
5       services, including but not limited to, contracts for purchase of services  
6       and personal service agreements, interest in real property, or  
7       construction, and includes all government functions that relate to such  
8       activities, including best value selection and qualification based  
9       selection.

10       (2) "Emergency procurement" means procurement by a state agency  
11       that is made necessary by a sudden, unexpected occurrence that poses  
12       a clear and imminent danger to public safety or requires immediate  
13       action to prevent or mitigate the loss or impairment of life, health,

14 property or essential public services or in response to a court order,  
15 settlement agreement or other similar legal judgment.

16 (3) "Best value selection" means a contract selection process in which  
17 the award of a contract is based on a combination of quality and cost  
18 considerations.

19 (4) "Qualification based selection" means a contract selection process  
20 in which the award of a contract is primarily based on an assessment  
21 of contractor qualifications and on the negotiation of a fair and  
22 reasonable price.

23 (5) "State contracting agency" means any state agency or political  
24 subdivision of the state, other than the State Contracting Standards  
25 Board, as established pursuant to section 2 of this act, that is  
26 authorized by law to enter into contracts, including, but not limited to,  
27 any quasi-public agency, as defined in section 1-120 of the general  
28 statutes, and any state agency, as defined in section 4a-50 of the  
29 general statutes, that receives state funds. State contracting agency  
30 does not include the Judicial Department or the Joint Committee on  
31 Legislative Management.

32 (6) "Contractor" means any person or entity bidding on, submitting  
33 a proposal for, applying for or participating as a subcontractor for, a  
34 transaction, procurement or contract described in section 3 of this act,  
35 including, but not limited to, a small contractor, minority business  
36 enterprise, organization providing products and services by persons  
37 with disabilities, as described in section 17b-656 of the general statutes,  
38 and an individual with a disability, as defined in section 4a-60g of the  
39 general statutes.

40 (7) "Contract risk assessment" means (A) the identification and  
41 evaluation of loss exposures and risks, including, but not limited to,  
42 business and legal risks associated with the contracting process and  
43 the contracted goods and services, and (B) the identification,  
44 evaluation and implementation of measures available to minimize  
45 potential loss exposures and risks.

46       (8) "Privatization contract" means an agreement or series of  
47 agreements between a state contracting agency and a person, in which  
48 such person agrees to provide services valued at five hundred  
49 thousand dollars or more over the life of the contract that are  
50 substantially similar to and in lieu of services provided, in whole or in  
51 part, by employees of such agency or by employees of another state  
52 agency for such state agency. "Privatization contract" does not include  
53 an agreement to only provide legal services, litigation support or  
54 management or financial consulting.

55       (9) "Comparative costs" means a comparison of the costs of entering  
56 into a privatization contract to the costs of the state providing the  
57 services that are the subject of the privatization contract, using a  
58 comparative costs analysis.

59       (10) "Comparative costs analysis" means an examination of all direct  
60 and indirect costs or savings to the state and an examination of the  
61 effect of a proposed privatization contract on the public health and  
62 safety of residents of the state who may utilize such privatized service.

63       (11) "Purchase of service agreement" means any contract between a  
64 state agency and a nonprofit agency, partnership or corporation for the  
65 purchase by the state of ongoing and routine health and human  
66 services for clients of the Departments of Social Services, Children and  
67 Families, Mental Retardation, Mental Health and Addiction Services,  
68 Public Health and Correction which is overseen by the Office of Policy  
69 and Management.

70       (12) "Rebidding" means a state contracting agency's requesting of  
71 proposals or qualifications for a contract to provide goods or services  
72 that are specific to an existing facility or program, provided such  
73 goods or services are being provided under a contract in effect as of the  
74 effective date of this section.

75       (13) "Established wage rate" means (A) for for-profit contractors a  
76 minimum wage rate for employee positions with duties that are  
77 substantially similar to the duties performed by a regular agency,

78 which rate shall be the lesser of step one of the grade or classification  
79 under which the comparable regular agency employee is paid, or the  
80 standard private sector wage rate for said position, as determined by  
81 the Labor Commissioner in accordance with section 31-57f of the  
82 general statutes and shall include a percentage representing the  
83 normal costs of health care and pension benefits for comparable state  
84 employees hired at the time of the contract, (B) for nonprofit providers,  
85 a rate no less than step one of the grade or classification under which  
86 the most comparable regular agency employee is paid and shall  
87 include a percentage representing the normal costs of health care and  
88 pension benefits for comparable state employees hired at the time of  
89 the contract, (C) for nonprofit providers receiving less than ninety per  
90 cent of their funding for personal services from the state, the  
91 established rate may be lowered, provided that all additional funding  
92 for wage and benefits required by section 14 of this act is used in a  
93 manner designed to assure that all similarly situated workers are paid,  
94 as closely as possible, in accordance with section 14 and is used to  
95 provide wage or benefit increases to employees covered by the state  
96 contract and to other employees who are providing the services or  
97 performing functions comparable to those covered by the state  
98 contract.

99 (14) "Wage" means compensation for labor or services rendered by  
100 an employee and includes, but is not limited to, salaries.

101 (15) "Nonprofit agency" means any organization that is not a for-  
102 profit business and provides services contracted for by (A) the state, or  
103 (B) a nonstate entity. "Nonprofit agency" also includes private  
104 institutions of higher learning that receive state financial assistance.

105 Sec. 2. (NEW) (*Effective from passage*) (a) There is established a State  
106 Contracting Standards Board that shall consist of thirteen members  
107 appointed as follows: Seven members by the Governor, one member  
108 by the speaker of the House of Representatives, one member by the  
109 president pro tempore of the Senate, one member by the majority  
110 leader of the Senate, one member by the minority leader of the Senate,

111 one member by the majority leader of the House of Representatives  
112 and one member by the minority leader of the House of  
113 Representatives.

114 (b) Each member shall be appointed in accordance with the  
115 provisions of section 4-7 of the general statutes and have demonstrated  
116 sufficient knowledge by education, training or experience in several of  
117 the following enumerated areas: (1) Procurement; (2) contract  
118 negotiation, selection and drafting; (3) contract risk assessment; (4)  
119 competitive bidding and proposal procedures; (5) real estate  
120 transactions, including the purchase, sale and lease of real estate and  
121 buildings; (6) building construction and architecture; (7) business  
122 insurance and bonding; (8) ethics in public contracting; (9) federal and  
123 state statutes, procurement policies and regulations; (10) outsourcing  
124 and privatization analysis; (11) small and minority business enterprise  
125 development; (12) engineering and information technologies; and (13)  
126 personnel and labor relations, provided such education, training or  
127 experience was acquired by the member over not less than a  
128 continuous five-year period and not earlier than the ten-year period  
129 preceding such appointment.

130 (c) The chairperson of the board shall be appointed by the members  
131 of the board. The terms of the members shall be coterminous with the  
132 terms of the appointing authority for each member. If any vacancy  
133 occurs on the board, the appointing authority having the power to  
134 make the appointment under the provisions of this section shall  
135 appoint a person to fill such vacancy, in accordance with the  
136 provisions of this section.

137 (d) The State Contracting Standards Board shall be an independent  
138 body within the Executive Department.

139 (e) Members of the board shall be compensated two hundred dollars  
140 per diem. No member shall be a full-time state or municipal employee  
141 and no member or any spouse, child, stepchild, parent or sibling of  
142 such member shall be directly involved in any enterprise that does  
143 business with the state.

144 (f) The Governor shall appoint an executive director of the board  
145 who shall serve as an ex-officio, nonvoting member of the board. The  
146 executive director shall be appointed in accordance with the provisions  
147 of section 4-7 of the general statutes and may be removed from office  
148 for reasonable cause, in accordance with chapter 67 of the general  
149 statutes. The board shall, annually, conduct a performance evaluation  
150 of such executive director. The executive director shall report to the  
151 chairperson of the board and, in consultation with the Chief  
152 Procurement Officer, (1) conduct comprehensive planning with respect  
153 to the administrative functions of the board; (2) coordinate the budget  
154 and personnel activities of the board; (3) cause the administrative  
155 organization of the board to be examined with a view to promoting  
156 economy and efficiency; (4) act as the external liaison for the board;  
157 and (5) execute such other duties as may be assigned by the  
158 chairperson of the board. In accordance with established procedures,  
159 the executive director may enter into such contractual agreements as  
160 may be necessary for the discharge of the director's duties.

161 (g) The board shall appoint a Chief Procurement Officer for a term  
162 not to exceed six years, unless reappointed pursuant to the provisions  
163 of this subsection. The Chief Procurement Officer shall be supervised  
164 by the chairperson of the board and annually evaluated by and serve  
165 at the pleasure of the board.

166 (1) The Chief Procurement Officer shall be responsible for carrying  
167 out the policies of the board including, but not limited to, oversight,  
168 investigation, auditing, agency procurement certification and  
169 procurement and project management training and enforcement of  
170 such policies as well as the application of such policies to the screening  
171 and evaluation of current and prospective contractors. In accordance  
172 with established procedures, the Chief Procurement Officer may enter  
173 into such contractual agreements as may be necessary for the discharge  
174 of the duties as set forth in this section and established by the board,  
175 including, but not limited to, recommending best practices and  
176 providing operational and administrative assistance to state agencies  
177 determined, by the board, to be in violation of this section.

178       (2) In addition to the duties set forth in this section and established  
179 by the board, the Chief Procurement Officer shall (A) oversee state  
180 contracting agency compliance with the provisions of the uniform  
181 procurement code; (B) monitor and assess the procurement duties of  
182 each Agency Procurement Officer; (C) administer the certification  
183 system and monitor the level of agency compliance with the  
184 requirements of such code, including, but not limited to the education  
185 and training, performance and qualifications of agency contract  
186 officers; (D) review and monitor the procurement processes of each  
187 state contracting agency; and (E) serve as chairperson of the  
188 Contracting Standards Advisory Council established in section 11 of  
189 this act and chairperson and an ex-officio member of the Vendor and  
190 Citizens Advisory Panel established in said section.

191       (h) The board may contract with consultants and professionals on a  
192 temporary or project by project basis and may employ, subject to the  
193 provisions of chapter 67 of the general statutes, such employees as may  
194 be necessary to carry out the provisions of sections 2 to 8, inclusive, of  
195 this act.

196       (i) The reasonable expenses of the State Contracting Standards  
197 Board and its employees shall be paid from the budget of the board  
198 upon the approval of the board.

199       (j) No employee of the State Contracting Standards Board shall hold  
200 any other state or full-time municipal position. No nonclerical  
201 employee of the board or any spouse, child, stepchild, parent or sibling  
202 of such employee shall be directly involved in any enterprise that does  
203 business with the state. Each member and employee of the State  
204 Contracting Standards Board shall file with the board and with the  
205 Office of State Ethics a financial statement indicating all sources of  
206 business income of such person in excess of one thousand dollars and  
207 the name of any business with which such member or employee is  
208 associated, as defined in subsection (b) of section 1-79 of the general  
209 statutes. Such statement shall be a public record. Financial statements  
210 for the preceding calendar year shall be filed with the board, as

211 required by law, if such employee or member held such a position  
212 during the preceding calendar year.

213 (k) Any violation of the provisions of subsection (j) of this section  
214 shall constitute a violation of part I of chapter 10 of the general statutes  
215 and may be the subject of a complaint and investigation filed and  
216 conducted in accordance with the provisions of section 1-82 of the  
217 general statutes.

218 (l) The board shall adopt such rules as it deems necessary for the  
219 conduct of its internal affairs, in accordance with section 4-167 of the  
220 general statutes, including, but not limited to, rules of procedure for  
221 any appeal taken pursuant to section 10 of this act and any review  
222 undertaken pursuant to section 10 of this act.

223 (m) Seven members of the board shall constitute a quorum which  
224 shall be required for the transaction of business by the board.

225 Sec. 3. (NEW) (*Effective from passage*) (a) On or before February 1,  
226 2008, the State Contracting Standards Board shall prepare a uniform  
227 procurement code applicable to state contracting agency expenditures,  
228 including, but not limited to, expenditures: (1) By municipalities that  
229 receive state funds, (2) involving any state contracting and  
230 procurement processes, including, but not limited to, leasing and  
231 property transfers, purchasing or leasing of supplies, materials or  
232 equipment, as defined in section 4a-50 of the general statutes,  
233 consultant or consultant services, as defined in section 4b-55 of the  
234 general statutes, personal service agreements, as defined in section 4-  
235 212 of the general statutes, purchase of service agreements or  
236 privatization contracts, and (3) relating to contracts for the  
237 construction, reconstruction, alteration, remodeling, repair or  
238 demolition of any public building. Nothing in this section shall be  
239 construed to require the application of uniform procurement code  
240 procedures when such procurement involves the expenditure of  
241 federal assistance or contract funds and federal law provides  
242 applicable procurement procedures to the extent such procedures are  
243 inconsistent with the uniform procurement code.



244 (b) The uniform procurement code described in subsection (a) of  
245 this section shall be designed to: (1) Establish uniform contracting  
246 standards and practices among the various state contracting agencies;  
247 (2) simplify and clarify the state's laws governing contracting  
248 standards and procurement policies and practices, including, but not  
249 limited to, procedures for competitive sealed bids, competitive sealed  
250 proposals, small purchases, sole source procurements, emergency  
251 procurements and special procurements; (3) ensure the fair and  
252 equitable treatment of all businesses and persons who deal with the  
253 procurement system of the state; (4) include a process to maximize the  
254 use of small contractors and minority business enterprises, as defined  
255 in section 4a-60g of the general statutes; (5) provide increased economy  
256 in state procurement activities and maximize purchasing value to the  
257 fullest extent possible; (6) ensure that the procurement of supplies,  
258 materials, equipment, services, real property and construction required  
259 by any state contracting agency is obtained in a cost-effective and  
260 responsive manner; (7) preserve and maintain the existing contracting,  
261 procurement, disqualification and termination authority and discretion  
262 of any state contracting agency when such contracting and  
263 procurement procedures represent best practices; (8) include a process  
264 to improve contractor and state contracting agency accountability; (9)  
265 include standards by which state contracting agencies shall evaluate  
266 proposals to privatize state or quasi-public agency services and  
267 privatization contract bid proposals. Such standards shall, at a  
268 minimum, include: (A) A requirement for a comparative costs analysis  
269 to be completed prior to any state contracting agency decision to  
270 privatize services, (B) adequate notification requirements to affected  
271 employees and, where applicable, certified bargaining agents, (C) a  
272 requirement for the preparation of an employee impact statement  
273 including measures that may be taken by the bidder to retain qualified  
274 state contracting agency employees, (D) a provision requiring state  
275 contracting agencies to provide adequate information and resources to  
276 their employees for the purpose of encouraging and assisting such  
277 state contracting agency employees to organize and submit a bid to  
278 provide the services that are the subject of such privatization contract

279 if such contract would require the layoff, transfer or reassignment of  
280 one hundred or more state contracting agency employees, (E) a  
281 requirement that bidders disclose all relevant information pertaining  
282 to past performance, pending or concluded legal or regulatory  
283 proceedings or complaints, including, but not limited to, compliance  
284 with fair employment practices and nondiscrimination standards, as  
285 described in section 46a-60 of the general statutes, and compliance  
286 with federal fair employment and nondiscrimination standards, (F) a  
287 requirement that when any applicable collective bargaining agreement  
288 allows layoffs resulting from privatization, the for-profit contractor  
289 shall offer available employee positions, pursuant to the contract, to  
290 qualified regular employees of the state contracting agency whose  
291 state employment is terminated because of such privatization contract,  
292 provided such state contracting agency employees satisfy the hiring  
293 criteria of the contractor, and (G) provisions for a fair wage according  
294 to objective standards, such as the established wage rate as defined in  
295 section 1 of this act; (10) provide that the renewal, modification,  
296 extension or rebidding of a privatization agreement in effect on or  
297 before the effective date of this section, or reentered into after the  
298 effective date of this section, shall be subject to the procurement code  
299 on and after January 1, 2010; (11) establish standards for leases and  
300 lease-purchase agreements and for the purchase and sale of real estate;  
301 and (12) provide a process for competitive sealed bids, competitive  
302 sealed proposals, small purchases, sole source procurements,  
303 emergency procurements, special procurements, best value selection,  
304 qualification based selection and the conditions for the use of each.

305 (c) In preparing the uniform procurement code described in  
306 subsection (a) of this section, the State Contracting Standards Board  
307 shall utilize the comprehensive review of existing state contracting and  
308 procurement laws, regulations and practices undertaken by the State  
309 Contracting Standards Board, as established by Executive Order No.  
310 7B and shall utilize existing procurement procedures and guidelines  
311 that the board deems appropriate.

312 (d) Upon request by the State Contracting Standards Board, each

313 state contracting agency engaged in procurement shall provide the  
314 board, in a timely manner, with such procurement information as the  
315 board deems necessary. The board shall have access to all information,  
316 files and records related to any state contracting agency in furtherance  
317 of this purpose. Nothing in this section shall be construed to require  
318 the board's disclosure of documents that are exempt from disclosure  
319 pursuant to chapter 14 of the general statutes or that may be protected  
320 from disclosure under claim of an attorney-client privilege.

321 (e) Not later than February 1, 2008, such uniform procurement code  
322 shall be submitted to the General Assembly by the State Contracting  
323 Standards Board and shall be referred to the joint standing committee  
324 of the General Assembly having cognizance of government  
325 administration which shall report upon such uniform procurement  
326 code by resolution.

327 (f) Such uniform procurement code shall be effective on the day  
328 following the last day of the 2008 regular session of the General  
329 Assembly, unless the General Assembly, by resolution, rejects the  
330 terms of such uniform procurement code. The General Assembly may  
331 reject such uniform procurement code by a three-fifths vote of each  
332 house. Such uniform procurement code shall be deemed approved if  
333 the General Assembly fails to vote to approve or reject such uniform  
334 procurement code not later than the end of the 2008 regular session.

335 Sec. 4. (NEW) (*Effective from passage*) All rights, powers, duties, and  
336 authority relating to the procurement policies of the state, vested in, or  
337 exercised by, any state contracting agency under the general statutes  
338 are transferred to the board, as follows:

339 (1) Acquisition of supplies, services and construction, and the  
340 management, control, warehousing, sale and disposal of supplies,  
341 services and construction;

342 (2) Any state contracting and procurement processes, including, but  
343 not limited to, leasing and property transfers, purchasing or leasing of  
344 supplies, materials or equipment, consultant or consultant services,

345 purchase of service agreements or privatization contracts; and

346 (3) Any contract for the construction, reconstruction, alteration,  
347 remodeling, repair or demolition of any public building.

348 Sec. 5. (NEW) (*Effective from passage*) The State Contracting  
349 Standards Board shall have the following authority and  
350 responsibilities:

351 (a) Recommend the repeal of repetitive, conflicting or obsolete  
352 statutes concerning state procurement;

353 (b) Review proposed legislation and regulations concerning state  
354 procurement prior to adoption, and develop policies concerning the  
355 procurement, management, control and disposal of any and all  
356 supplies, services, and construction to be procured by the state,  
357 including, but not limited to:

358 (1) Conditions and procedures for delegations of procurement  
359 authority;

360 (2) Prequalification, suspension, debarment and reinstatement of  
361 prospective bidders and contractors;

362 (3) Small purchase procedures;

363 (4) Conditions and procedures for the procurement of perishables  
364 and items for resale;

365 (5) Conditions and procedures for the use of source selection  
366 methods authorized by the uniform procurement code;

367 (6) Conditions and procedures for emergency procurements;

368 (7) Conditions and procedures for the selection of contractors by  
369 processes or methods that restrict full and open competition;

370 (8) The opening or rejection of bids and offers, and waiver of errors  
371 in bids and offers;

- 372 (9) Confidentiality of technical data and trade secrets submitted by  
373 actual or prospective bidders;
- 374 (10) Partial, progressive, and multiple awards;
- 375 (11) Supervision of storerooms and inventories, including  
376 determination of appropriate stock levels and the management,  
377 transfer, sale or other disposal of publicly-owned supplies;
- 378 (12) Regulations providing for conducting cost and price analysis;
- 379 (13) Use of payment and performance bonds;
- 380 (14) Guidelines for use of cost principles in negotiations,  
381 adjustments, and settlements; and
- 382 (15) Identification of procurement best practices;
- 383 (c) Adopt regulations, pursuant to chapter 54 of the general statutes,  
384 to carry out the provisions of the uniform procurement code, in order  
385 to facilitate consistent application of the law and require the  
386 implementation of procurement best practices;
- 387 (d) Develop, acquire, implement and provide oversight and  
388 management of information systems for state procurement including,  
389 but not limited to, data element and design and the State Contracting  
390 Portal, as described in section 20 of this act;
- 391 (e) Develop, publish and maintain the uniform procurement code  
392 for all state contracting agencies;
- 393 (f) Assist state contracting agencies in complying with the uniform  
394 procurement code by providing guidance, models, advice and  
395 practical assistance to state contracting agency staff relating to: (1)  
396 Buying the best service at the best price, (2) properly selecting  
397 contractors, and (3) drafting contracts that achieve state goals of  
398 accountability, transparency and results based outcomes and to protect  
399 taxpayers' interest;

400 (g) Coordinate the Agency Procurement Officers of each state  
401 contracting agency and any contracting officers:

402 (1) The head of each state contracting agency shall appoint a senior  
403 official as the Agency Procurement Officer. Such officer shall serve as  
404 the liaison between the agency and the Chief Procurement Officer on  
405 all matters relating to the agency's procurement activity, including, but  
406 not limited to, implementation and compliance with the provisions of  
407 the uniform procurement code and any policies or regulations adopted  
408 by the State Contracting Standards Board, and coordination of the  
409 training and education of agency procurement employees;

410 (2) The Agency Procurement Officer shall be responsible for  
411 assuring that contractors are properly screened prior to the award of a  
412 contract, evaluating contractor performance during and at the  
413 conclusion of a contract, submitting written evaluations of contractors  
414 to a central data repository to be designated by the board and creating  
415 a project management plan for the agency with annual reports to the  
416 board pertaining to procurement projects within the agency;

417 (h) Review and certify, on or after July 1, 2008, that a state  
418 contracting agency's procurement processes are in compliance with the  
419 code by:

420 (1) Establishing procurement and project management education  
421 and training criteria and certification procedures for the Agency  
422 Procurement Officer and the contracting officers. All Agency  
423 Procurement Officers and contracting officers shall maintain such  
424 certification in good standing at all times while performing  
425 procurement functions;

426 (2) Approving an ethics training course for state employees  
427 involved in procurement and for state contractors and substantial  
428 subcontractors who are prequalified. Such ethics training course may  
429 be developed and provided by the Office of State Ethics or by any  
430 person, firm or corporation, provided such course is approved by the  
431 State Contracting Standards Board;

432 (i) Recertify each state contracting agency's procurement processes,  
433 triennially, and provide agencies with notice of any certification  
434 deficiency and exercise authority as provided under section 8 of this  
435 act if a determination of noncompliance is made;

436 (j) Define the contract data reporting requirements to the board for  
437 state agencies concerning information on: (1) The number and type of  
438 state contracts currently in effect state-wide; (2) the term and dollar  
439 value of such contracts; (3) a list of client agencies; (4) a description of  
440 services purchased under such contracts; (5) contractor names; (6) an  
441 evaluation of contractor performance, including, but not limited to,  
442 records pertaining to the suspension or disqualification of contractors,  
443 and assuring such information is available on the state contracting  
444 portal; and (7) a list of contracts and contractors awarded without full  
445 and open competition stating the reasons for and identifying the  
446 approving authority; and

447 (k) Provide the Governor and the joint standing committee of the  
448 General Assembly having cognizance of matters relating to  
449 government administration with recommendations concerning the  
450 uniform procurement code.

451 Sec. 6. (NEW) (*Effective from passage*) (a) The State Contracting  
452 Standards Board, with the advice and assistance of the Commissioner  
453 of Administrative Services, shall develop a standardized state  
454 procurement and project management education and training  
455 program. Such education and training program shall develop  
456 education, training and professional development opportunities for  
457 employees of state contracting agencies charged with procurement  
458 responsibilities. The program shall educate said employees in general  
459 business acumen and on proper purchasing procedures as established  
460 in the uniform procurement code, with an emphasis on ethics, fairness,  
461 consistency and project management. Participation in the program  
462 shall be required of any supervisory and nonsupervisory state  
463 employees in state contracting agencies with responsibility for buying,  
464 purchasing, renting, leasing or otherwise acquiring any supplies,

465 service or construction, including any employee responsible for the  
466 description of requirements, selection and solicitation of sources,  
467 preparation and award of contracts and all phases of contract  
468 administration.

469 (b) The program shall include, but shall not be limited to, (1)  
470 training and education concerning federal, state and municipal  
471 procurement processes, including the uniform procurement code and  
472 principals of project management; (2) training and education courses  
473 developed in cooperation with the Office of State Ethics, the Freedom  
474 of Information Commission, the State Elections Enforcement  
475 Commission, the Commission on Human Rights and Opportunities,  
476 the office of the Attorney General and any other state agency the board  
477 determines is necessary in carrying out the purposes of the uniform  
478 procurement code; (3) providing technical assistance to state  
479 contracting agencies and municipalities for implementing the uniform  
480 procurement code, regulations, policies and standards developed by  
481 the board; (4) training for current and prospective contractors and  
482 vendors and others seeking to do business with the state; and (5)  
483 training and education of state employees in the area of best  
484 procurement practices in state purchasing with the goal of achieving  
485 the level of acumen necessary to achieve the objectives of the uniform  
486 procurement code.

487 (c) Any employee who completes the program described in  
488 subsection (b) of this section shall be issued documentation by the  
489 board acknowledging such employee's participation in the training  
490 and education program. The board shall submit an annual report to  
491 the Governor and the General Assembly on the status of such training  
492 and education program.

493 (d) The board shall adopt regulations, in accordance with the  
494 provisions of chapter 54 of the general statutes, relating to the  
495 development and implementation of the training and education  
496 program established under subsection (b) of this section.

497 Sec. 7. (NEW) *(Effective from passage)* (a) The State Contracting



498 Standards Board shall conduct audits of state contracting agencies  
499 triennially, to ensure compliance with the uniform procurement code.  
500 In conducting any such audit, the board shall have access to all  
501 contracting and procurement records, may interview any and all  
502 personnel responsible for contracting, contract negotiations or  
503 procurement and may enter into an agreement with the Auditors of  
504 Public Accounts to effectuate such audit.

505 (b) Upon completion of any such audit, the board shall prepare and  
506 issue a compliance report for such state contracting agency. Such  
507 report shall identify any process or procedure that is inconsistent with  
508 the uniform procurement code and indicate corrective measures the  
509 board deems necessary to comply with code requirements. Such report  
510 shall be issued and delivered not later than thirty days after  
511 completion of such audit and shall be a public record.

512 Sec. 8. (NEW) (*Effective from passage*) (a) For cause, the State  
513 Contracting Standards Board may review, terminate or recommend  
514 termination of any contract or procurement agreement undertaken by  
515 any state contracting agency after providing fifteen days notice to the  
516 state contracting agency and the applicable contractor, and consulting  
517 with the Attorney General. Such termination of a contract or  
518 procurement agreement by the board may occur only after (1) the  
519 board has consulted with the contracting agency to determine the  
520 impact of an immediate termination of the contract, (2) a determination  
521 has been made jointly by the board and the contracting agency that an  
522 immediate termination of the contract will not create imminent peril to  
523 the public health, safety or welfare, and (3) a vote of two-thirds of the  
524 members of the board present and voting for that purpose. Such action  
525 shall be accompanied by notice to the state contracting agency and any  
526 other affected party. For the purpose of this section, "for cause" means:  
527 (A) A violation of section 1-84 or 1-86e of the general statutes; (B)  
528 wanton or reckless disregard of any state contracting and procurement  
529 process by any person substantially involved in such contract; or (C)  
530 notification from the Attorney General to the state contracting agency  
531 that an investigation pursuant to section 4-61dd of the general statutes

532 has concluded that the process by which such contract was awarded  
533 was compromised by fraud, collusion or other serious ethical  
534 improprieties.

535 (b) Following consultation with the state contracting agency, and  
536 upon providing fifteen days notice and opportunity for a hearing, the  
537 State Contracting Standards Board may restrict or terminate the  
538 authority of any state contracting agency to enter into any contract or  
539 procurement agreement if the board, upon a vote of two-thirds of the  
540 members of the board present and voting for such purpose, determines  
541 that such state contracting agency failed to comply with any  
542 contracting and procurement requirements, and evidenced a reckless  
543 disregard for applicable procedures and policy, provided such  
544 restriction or termination of authority is in the state's best interest and  
545 the board has made arrangements for exercise of the contracting power  
546 of such agency during the period of restriction or termination. Such  
547 restriction or termination of authority shall remain in effect until such  
548 time as the board determines that such state contracting agency has  
549 implemented corrective measures and demonstrated compliance with  
550 the uniform procurement code requirements.

551 (c) Following consultation with the state contracting agency, and  
552 thereafter upon providing fifteen days notice and an opportunity for a  
553 hearing, the State Contracting Standards Board may report and make  
554 recommendations to a state contracting agency requiring such agency  
555 to take appropriate action to restrict or terminate the authority of an  
556 employee or agent to enter into any contract or procurement  
557 agreement if the board, upon a vote of two-thirds of the members of  
558 the board present and voting for such purpose, determines that such  
559 employee or agent failed to comply with any contracting and  
560 procurement requirements, and evidenced a reckless disregard for  
561 applicable procedures and policy. Such restriction or termination of  
562 authority shall remain in effect until such time as the board determines  
563 that such state contracting agency has implemented corrective  
564 measures and demonstrated compliance with the uniform  
565 procurement code requirements.

566 Sec. 9. (NEW) (*Effective October 1, 2008*) (a) Any bidder on a state  
567 contract may contest the solicitation or award of a contract to the  
568 commissioner or director of the state contracting agency that awarded  
569 such contract. Such contest shall be submitted, in writing, not later  
570 than fourteen days after such bidder knew or should have known of  
571 the facts giving rise to such contest and shall be limited to the  
572 procedural elements of the solicitation or award process, or claims of  
573 an unauthorized or unwarranted, noncompetitive selection process.

574 (b) The commissioner or director of such state contracting agency, or  
575 the commissioner's or director's designee, shall have the authority to  
576 settle and resolve any such contest.

577 (c) In the event such contest is not resolved by mutual agreement,  
578 the commissioner or director of a state contracting agency, or the  
579 commissioner's or director's designee, shall issue a decision, in writing,  
580 not later than thirty days after receipt of any such contest. Such  
581 decision shall:

582 (1) Describe the procedure used by such agency in soliciting and  
583 awarding such contract;

584 (2) Indicate such agency's finding as to the merits of such bidder's  
585 contest; and

586 (3) Inform such bidder of the right to review, as provided in section  
587 10 of this act.

588 (d) A copy of such decision shall be provided to such bidder.

589 Sec. 10. (NEW) (*Effective October 1, 2009*) (a) Any bidder may appeal  
590 a decision issued by the commissioner or director of a state contracting  
591 agency, or the commissioner's or director's designee, pursuant to  
592 subsection (c) of section 9 of this act to the State Contracting Standards  
593 Board.

594 (b) Any such appeal shall be filed with the board not later than  
595 fourteen days after such bidder's receipt of a decision issued pursuant

596 to subsection (c) of section 9 of this act. Such bidder shall set forth the  
597 facts supporting its claim in sufficient detail for the State Contracting  
598 Standards Board to determine whether the procedural elements of the  
599 solicitation or award failed to comply with the code or whether an  
600 unauthorized or unwarranted, noncompetitive selection process was  
601 utilized.

602 (c) Any appeal filed pursuant to subsection (b) of this section shall  
603 not be deemed to prohibit the award or execution of any such  
604 contested contract.

605 (d) The State Contracting Standards Board shall create a three-  
606 member appeals review subcommittee that shall review any appeal  
607 filed pursuant to subsection (b) of this section and decide whether such  
608 solicitation or award was in compliance with the uniform procurement  
609 code, and whether allegations of an unauthorized or unwarranted,  
610 noncompetitive selection process have been demonstrated. A  
611 unanimous vote of such subcommittee shall be dispositive of any such  
612 appeal. A split vote of such subcommittee shall result in a review of  
613 the appeal by the full membership of the board which, by a vote of  
614 two-thirds of its members present and voting for such purpose, shall  
615 decide whether the solicitation or award of such contract was in  
616 compliance with the code and whether allegations of an unauthorized  
617 or unwarranted, noncompetitive selection process have been  
618 demonstrated.

619 (e) Such appeals review subcommittee shall issue a written decision  
620 or take other appropriate action on each appeal not later than ninety  
621 days after the filing of such appeal. A written copy of any such  
622 decision shall be provided to such bidder.

623 (f) In the event of a review by the full board, the board shall issue a  
624 written decision or take other appropriate action on such appeal not  
625 later than ninety days after receipt of the appeal from the appeals  
626 review subcommittee. A written copy of any such decision shall be  
627 provided to such bidder.

628 (g) In the event that the appeals review subcommittee or the full  
629 board, as the case may be, determines that a procedural violation  
630 occurred, or that allegations of an unauthorized or unwarranted,  
631 noncompetitive selection process have been demonstrated, the board  
632 shall direct the state contracting agency to take corrective action not  
633 later than thirty days after the date of the subcommittee's or board's  
634 decision, as applicable.

635 (h) Any three members of the board may request a full board review  
636 of any contract deliberation or award process of a state contracting  
637 agency.

638 (i) A decision issued by the full board or the appeals review  
639 subcommittee under this section shall be final and not subject to  
640 appeal under sections 4-180 and 4-183 of the general statutes.

641 Sec. 11. (NEW) (*Effective October 1, 2008*) (a) There is established a  
642 Contracting Standards Advisory Council that shall consist of nine state  
643 contracting agency representatives designated by the Governor,  
644 including at least one representative from each of the following: The  
645 Department of Administrative Services, the Department of  
646 Transportation and the Department of Public Works. The advisory  
647 council shall meet at least once a year to discuss problems with  
648 procurement processes and to make recommendations for  
649 improvements to the State Contracting Standards Board. The advisory  
650 council may conduct studies, research and analyses and make reports  
651 and recommendations with respect to subjects or matters within the  
652 jurisdiction of the State Contracting Standards Board.

653 (b) There shall be a Vendor and Citizens Advisory Panel, comprised  
654 of fifteen members appointed, as follows: Three members by the  
655 Governor, and two members by each of the following: The speaker of  
656 the House of Representatives, the majority and minority leaders of the  
657 House of Representatives, the president pro tempore of the Senate and  
658 the majority and minority leaders of the Senate. There shall be no more  
659 than six vendors with state procurement experience on the panel and  
660 the remaining citizen members shall have demonstrated sufficient

661 knowledge by education, training or experience in several of the  
662 following enumerated areas: (1) Government procurement; (2) contract  
663 negotiation, drafting and management; (3) contract risk assessment; (4)  
664 preparing requests for proposals, invitations to bid and other  
665 procurement solicitations; (5) evaluating proposals, bids and  
666 quotations; (6) real property transactions; (7) business insurance and  
667 bonding; (8) the state code of ethics; (9) federal and state statutes,  
668 policies and regulations; (10) outsourcing and privatization proposal  
669 analysis; (11) governmental taxation and finance; and (12) small and  
670 minority business enterprise development, provided such education,  
671 training or experience was acquired over not less than a continuous  
672 five-year period and not earlier than the ten-year period preceding  
673 such appointment. The chairperson of such panel is the Chief  
674 Procurement Officer, who shall be an ex-officio member of such panel.

675 (c) The panel shall make recommendations to the board regarding  
676 best practices in state procurement processes and project management,  
677 as well as other issues pertaining to state procurement.

678 Sec. 12. (NEW) (*Effective January 1, 2008*) (a) On and after October 1,  
679 2008, the powers, duties, obligations and other governmental functions  
680 of the State Properties Review Board, established under subsection (a)  
681 of section 4b-3 of the general statutes, shall transfer to the State  
682 Contracting Standards Board, established under section 2 of this act.  
683 The powers, duties, obligations and other governmental functions of  
684 the State Properties Review Board, shall thereafter vest in the State  
685 Contracting Standards Board, in accordance with the provisions of  
686 sections 4-38d and 4-39 of the general statutes.

687 (b) On or before October 1, 2008, the State Contracting Standards  
688 Board shall establish a three-member subcommittee of the board to be  
689 known as the state properties review subcommittee to perform the  
690 duties described under subsection (a) of this section. The  
691 subcommittee shall perform the duties established under subsection  
692 (a) of this section in accordance with the rules and procedures  
693 established by the board pursuant to subsection (l) of section 2 of this

694 act. The State Contracting Standards Board shall constitute a successor  
695 department to the State Properties Review Board in accordance with  
696 the provisions of sections 4-38d and 4-39 of the general statutes.

697 Sec. 13. Subsection (i) of section 4b-91 of the general statutes is  
698 repealed and the following is substituted in lieu thereof (*Effective from*  
699 *passage*):

700 (i) [In the event that the] The General Assembly [approves] may  
701 approve legislation authorizing an exception to the competitive  
702 bidding process for a project, provided such legislation is approved, in  
703 whole, by a two-thirds vote of the members of each house of the  
704 General Assembly. If rejected, the legislation proposing an exception  
705 for such project shall not be valid and shall not be implemented. The  
706 legislation shall be deemed rejected if the General Assembly fails to  
707 vote to approve or reject the legislation (1) prior to the adjournment of  
708 the regular session of the General Assembly during which the  
709 legislation is filed, (2) prior to the adjournment of the next regular  
710 session of the General Assembly following the date on which the  
711 legislation is filed if the General Assembly is not in regular session on  
712 such date, or (3) prior to the adjournment of a special session convened  
713 before the next regular session of the General Assembly for the  
714 purpose of considering the legislation if the General Assembly is not in  
715 regular session on the date on which the legislation is filed. However,  
716 if the legislation is filed less than thirty days before the end of a regular  
717 session, the General Assembly may vote to approve or reject the  
718 legislation (A) not later than thirty days after the first day of a special  
719 session convened before the next regular session of the General  
720 Assembly for the purpose of considering the legislation, or (B) not later  
721 than thirty days after the first day of the next regular session of the  
722 General Assembly. In the event that the General Assembly approves  
723 legislation authorizing an exception to the competitive bidding process  
724 for a project, the State Properties Review Board shall complete a  
725 review of the contract for such project and approve or disapprove such  
726 contract no later than thirty days after the Commissioner of Public  
727 Works submits such contract to the board. Such review shall be

728 conducted in accordance with the provisions of section 4b-3. On and  
729 after October 1, 2009, such review shall be conducted by the  
730 subcommittee of the State Contracting Standards Board established  
731 under subsection (b) of section 12 of this act. In the event that such  
732 review does not occur within the thirty-day period prescribed by this  
733 subsection, such contract shall be deemed to be approved.

734 Sec. 14. (NEW) (*Effective from passage*) (a) From the effective date of  
735 this section until the implementation of the uniform procurement code  
736 as described in section 3 of this act, no state agency, as defined in  
737 section 4a-50 of the general statutes, quasi-public agency, as defined in  
738 section 1-120 of the general statutes, or constituent unit of higher  
739 education, may enter into a privatization contract other than an  
740 emergency procurement as defined in section 1 of this act, unless each  
741 of the following conditions have been met:

742 (1) Such contract is cost effective and fiscally prudent taking into  
743 consideration comparative costs including all direct and indirect costs  
744 to the state and the impact of such privatization contract on the public  
745 health and safety and the residents of Connecticut who use the services  
746 that are the subject of the privatization contract.

747 (2) Such agency has complied with the provisions of subsection (b)  
748 of this section.

749 (3) Prior to any state agency's solicitation of bids for a privatization  
750 contract, such agency shall prepare an analysis of the costs and  
751 benefits to the agency of (A) privatizing services, and (B) continuing to  
752 provide such services using state employees of the state agency. Such  
753 analysis shall include, but not be limited to: (i) An examination of all  
754 direct and indirect costs to the state, excluding wages and benefits, but  
755 including, unemployment compensation costs of state employees  
756 terminated as a result of the privatization contract, gain or loss of  
757 income tax and sales tax revenue to the state, and (ii) an examination  
758 of the effect of such proposed privatization on the quality of such  
759 service, and the public health and safety of the residents of the state  
760 who may utilize such privatized service. Additionally, the state agency



761 shall include in such cost analysis any costs or penalties the state may  
762 incur if such contract is terminated by the state prior to the termination  
763 date contained in such contract. Each state agency shall transmit such  
764 analysis to the Secretary of the State, who shall maintain copies of each  
765 such proposed contract and analysis as public records, and to the  
766 Auditors of Public Accounts who may review and comment on such  
767 analysis.

768 (4) Not less than sixty days prior to publishing any notice soliciting  
769 bids for a privatization contract, a state agency shall notify each  
770 collective bargaining organization representing employees of the  
771 agency of such planned solicitation. If such contract would result in  
772 the layoff, transfer or reassignment of one hundred or more state or  
773 quasi-public agency employees, after consulting with the potentially  
774 affected bargaining units, if any, the agency shall provide adequate  
775 resources for the purpose of encouraging and assisting present agency  
776 employees to organize and submit a bid to provide the services that  
777 are the subject of the privatization contract. In determining what  
778 resources are adequate for this purpose, the agency shall refer to an  
779 existing collective bargaining agreement of a similar employee  
780 organization whose members perform the subject services, if available,  
781 which agreement provides similar resources in the same or other  
782 agencies. If no such collective bargaining agreement exists, the agency  
783 shall refer to any existing collective bargaining agreements providing  
784 such resources, and shall provide such resources at the minimum level  
785 of assistance provided in such agreements. The state agency shall also  
786 provide to the state employees its analysis and any report of the  
787 Auditors of Public Accounts prepared in connection with the  
788 provisions of this subsection. The agency shall consider any such  
789 employee bid on the same basis as all other bids. An employee bid  
790 may be made as a joint venture with other persons.

791 (b) The state agency soliciting bids for a privatization contract shall  
792 require the bidders to include the following information in their bid  
793 submission:

794 (1) The established wage rate or annual salary for each employee or,  
795 if not known, each position covered by the privatization contract;

796 (2) An agreement by any for-profit bidder or contractor to offer  
797 available employee positions pursuant to the contract to qualified  
798 regular employees of the state agency whose state employment is  
799 terminated because of the privatization contract and who satisfy the  
800 hiring criteria of the contractor;

801 (3) An agreement by the bidder or the contractor to refrain from  
802 engaging in discriminatory employment practices, as defined in  
803 section 46a-51 of the general statutes, and to take affirmative steps to  
804 provide such equal opportunity for all such persons;

805 (4) The annual rate of employee turnover;

806 (5) Any legal or administrative proceedings pending or concluded  
807 adversely against the applicant or any of the applicant's principals or  
808 key personnel within the past five years that relate to the procurement  
809 or performance of any public or private construction contract,  
810 employee safety and health, labor relations or other employment  
811 requirements and whether the applicant is aware of any investigation  
812 pending against the applicant or any principal or key personnel. Such  
813 information shall specify the date of the complaint, citation, court  
814 finding or administrative finding, the enforcement agency, rule, law or  
815 regulation involved and any additional information the contractor  
816 elects to submit; and

817 (6) Any collective bargaining agreements or personnel policies  
818 covering the employees that will provide services to the state.

819 (c) Any state agency selecting a bidder for a privatization contract  
820 shall develop a contract that is acceptable to the bidder and the state  
821 agency, provided such contract shall include provisions for the  
822 payment of funds from the state that are required to comply with the  
823 provisions of subdivision (4) of subsection (a) of this section, and for  
824 nonprofit human services providers, payment of twenty per cent of the

825 value of such contract for administrative costs and payment of not  
826 more than an additional forty per cent of the value of such contract  
827 that shall be used for the sole purpose of providing higher wages or  
828 salaries for employees who are not entry level or who have additional  
829 needed skills, provided the amount required of the contractor, and  
830 provided by the state, for wages, benefits and administrative costs for  
831 a contract renewal, modification, extension or rebidding shall not be  
832 increased by more than ten per cent per year as a result of the  
833 provisions of this subsection, except to the extent that additional  
834 increases are required by state or federal law or by the provisions of a  
835 collective bargaining agreement, and any such contract shall include  
836 the following terms:

837 (1) Where any applicable collective bargaining agreement allows  
838 layoffs as a result of privatization, any for-profit contractor shall be  
839 required to offer available employee positions pursuant to the contract  
840 to qualified regular employees of the agency whose state employment  
841 is terminated because of the privatization contract and who satisfy the  
842 hiring criteria of the contractor;

843 (2) The contractor shall be prohibited from engaging in  
844 discriminatory employment practices, as defined in section 46a-51 of  
845 the general statutes, and shall take affirmative steps to provide such  
846 equal opportunity for all such persons;

847 (3) The contractor shall be required to submit to performance audits  
848 of such contract by the Auditors of Public Accounts on a periodic  
849 basis, as determined by the Auditors of Public Accounts;

850 (4) The contractor shall pay a minimum wage rate no lower than the  
851 established wage rate under this section; and

852 (5) Such contract shall not become effective until the contractor and  
853 state agency have complied with the provisions of this section.

854 (d) Upon signing such contract, the state agency shall submit such  
855 contract to the Secretary of the State who shall maintain such contract

856 as a public document. Concomitantly, the state agency shall submit to  
857 the Secretary of the State the following information:

858 (1) A certification that the state agency has complied with all the  
859 requirements of the state agency contained in the provisions of this  
860 section;

861 (2) The state agency analysis prepared in accordance with this  
862 section and a report by the state agency explaining any changes in  
863 such analysis and report as a result of the terms of the proposed  
864 privatization contract;

865 (3) A state agency analysis of the quality of the services to be  
866 provided by the designated bidder and whether such services are  
867 equal to or exceed the quality of services that are provided by regular  
868 agency employees;

869 (4) A certification by the designated bidder that the bidder and its  
870 supervisory employees, while in the employ of the designated bidder,  
871 have no adjudicated record of repeated wilful noncompliance with any  
872 relevant federal or state regulatory law including, but not limited to,  
873 laws concerning labor relations, occupational safety and health,  
874 nondiscrimination and affirmative action, environmental protection  
875 and conflicts of interest; and

876 (5) A description of why the proposed privatization contract is in  
877 the public interest.

878 (e) (1) Until January 1, 2010, a privatization contract with a  
879 nonprofit contractor shall comply only with the provisions of  
880 subsection (c) of this section unless such contract results in the layoff,  
881 transfer or reassignment of any state employee, in which case, all of the  
882 provisions of this section shall apply to such contract; (2) the renewal,  
883 modification, extension or rebidding of a privatization agreement in  
884 effect on or before the effective date of this section shall only comply  
885 with the provisions of subsection (c) of this section, unless such  
886 contract results in the layoff, transfer or reassignment of any state

887 employee, in which case, all of the provisions of this section apply; (3)  
888 in no event shall any proposed privatization contract with a nonprofit  
889 provider be subject to subsection (f) of this section, unless such  
890 contract would result in the layoff, transfer or reassignment of any  
891 state employee.

892 (f) Any employees, or collective bargaining agent of any employee  
893 adversely affected by any proposed privatization contract may file a  
894 motion for an order to show cause in the superior court for the judicial  
895 district of Hartford claiming that such contract fails to comply with the  
896 substantive or procedural requirements of this section. A ruling on any  
897 such motion may: (1) Deny the motion, if the court finds that all  
898 procedural and substantive provisions of this section were complied  
899 with; (2) grant the motion, if the court finds that the proposed contract  
900 would substantively violate the provisions of this section; or (3) stay  
901 the effective date of the contract until any procedural or substantive  
902 defect found by the court has been corrected.

903 (g) No funds paid to any contractor as a result of any privatization  
904 contract may be used for purposes of lobbying, as defined in section 1-  
905 91 of the general statutes.

906 Sec. 15. Subsection (a) of section 1-92 of the general statutes is  
907 repealed and the following is substituted in lieu thereof (*Effective from*  
908 *passage*):

909 (a) The Citizen's Ethics Advisory Board shall adopt regulations, in  
910 accordance with chapter 54, to carry out the purposes of this part. Such  
911 regulations shall not be deemed to govern the conduct of any judge  
912 trial referee in the performance of such judge trial referee's duties  
913 pursuant to this chapter. Not later than January 1, 1992, the board shall  
914 adopt regulations which further clarify the meaning of the terms  
915 "directly and personally received" and "major life event", as used in  
916 subsection (e) of section 1-79 and subsection (g) of section 1-91. Not  
917 later than January 1, 2009, the board shall adopt regulations, in  
918 accordance with chapter 54, that further clarify the meaning of the  
919 term "directly or indirectly involved in any enterprise" as used in

920 section 2 of this act.

921       Sec. 16. (NEW) (*Effective January 1, 2008*) (a) On or before January 1,  
922 2009, the Judicial Branch shall prepare a uniform procurement code  
923 applicable to its contracting expenditures, including, but not limited to,  
924 expenditures: (1) Involving contracting and procurement processes,  
925 including, but not limited to, purchasing or leasing of supplies,  
926 materials or equipment, consultant or consultant services, personal  
927 service agreements or purchase of service agreements, and (2) relating  
928 to contracts for the renovation, alteration or repair of any Judicial  
929 Branch facility in accordance with section 4b-1 of the general statutes,  
930 as amended by this act.

931       (b) The uniform procurement code described in subsection (a) of  
932 this section shall be designed to: (1) Establish uniform contracting  
933 standards and practices; (2) simplify and clarify contracting standards  
934 and procurement policies and practices, including, but not limited to,  
935 procedures for competitive sealed bids, competitive sealed proposals,  
936 small purchases, sole source procurements, emergency procurements  
937 and special procurements; (3) ensure the fair and equitable treatment  
938 of all businesses and persons who deal with the procurement system;  
939 (4) include a process to maximize the use of small contractors and  
940 minority business enterprises, as defined in section 4a-60g of the  
941 general statutes; (5) provide increased economy in procurement  
942 activities and maximize purchasing value to the fullest extent possible;  
943 (6) ensure that the procurement of supplies, materials, equipment,  
944 services, real property and construction is obtained in a cost-effective  
945 and responsive manner; (7) include a process to ensure contractor and  
946 Judicial Department accountability; and (8) provide a process for  
947 competitive sealed bids, competitive sealed proposals, small  
948 purchases, sole source procurements, emergency procurements,  
949 special procurements, best value selection, qualification based  
950 selection and the conditions for their use.

951       (c) On or before February 1, 2009, the Judicial Branch shall submit  
952 such procurement code for review and approval to the joint standing

953 committee of the General Assembly having cognizance of matters  
954 relating to the Judicial Branch.

955 (d) Notwithstanding the provisions of subsections (a) and (b) of this  
956 section, the Judicial Branch shall be subject to the requirements of  
957 section 14 of this act.

958 Sec. 17. (NEW) (*Effective from passage*) The Office of Policy and  
959 Management shall establish procedures for use by state agencies when  
960 entering purchase of service agreements that shall provide for the  
961 payment of fifty per cent of any unexpended funds allocated for such  
962 contract to the contracting nonprofit agency, partnership or  
963 corporation at the end of such contract, provided the services rendered  
964 under such contract meet the contracted requirements for number,  
965 type and quality of services and there is either an agreed upon price  
966 for such services, a set cost for such services or a flat grant for an  
967 agreed upon level of services.

968 Sec. 18. (NEW) (*Effective October 1, 2007*) Notwithstanding any  
969 provision of the general statutes, the Department of Public Works shall  
970 classify any change order that occurs on any project overseen by the  
971 department within one of the following three categories: (1) Agency  
972 request, (2) error or omission, or (3) field conditions. Any such change  
973 orders shall be reported by the department to the State Contracting  
974 Standards Board.

975 Sec. 19. Subsection (b) of section 4b-1 of the general statutes is  
976 repealed and the following is substituted in lieu thereof (*Effective*  
977 *October 1, 2007*):

978 (b) Notwithstanding any other provision of the general statutes,  
979 except for the property of The University of Connecticut, the  
980 commissioner may supervise the care and control of (1) any state-  
981 owned or leased office building, and related buildings and grounds,  
982 outside the city of Hartford, used as district offices, except any state-  
983 owned or leased office building, and related buildings and grounds,  
984 used by the Judicial Department, and (2) any other state-owned or

985 leased property, on a temporary or permanent basis, if the  
986 commissioner, the Secretary of the Office of Policy and Management  
987 and the executive head of the department or agency supervising the  
988 care and control of such property agree, in writing, to such  
989 supervision. The commissioner may grant to a third party a license  
990 agreement for a term of not more than one year, including any  
991 extensions of such agreement, for the use and occupancy of any state  
992 property under the care and control of the commissioner. Any such  
993 license agreement shall be subject to prior approval, as to substance, by  
994 the Secretary of the Office of Policy and Management and the State  
995 Contracting Standards Board and, as to form, by the Attorney General.

996 Sec. 20. (NEW) (*Effective from passage*) (a) The Department of  
997 Administrative Services, in consultation with the State Contracting  
998 Standards Board, shall establish and maintain a single electronic portal  
999 available on the World Wide Web and located on the Department of  
1000 Administrative Services' web site for purposes of posting all  
1001 contracting opportunities with state agencies in the executive branch,  
1002 the constituent units of the state system of higher education and quasi-  
1003 public agencies. Such portal shall be known as the State Contracting  
1004 Portal.

1005 (b) The State Contracting Portal shall include:

1006 (1) All requests for bids or proposals, and other solicitations  
1007 regardless of the method of source selection, related materials and all  
1008 resulting contracts and agreements by state agencies;

1009 (2) A searchable database for locating information;

1010 (3) Personal services agreements and purchase of service contracts;

1011 (4) A state procurement and contract manual or other similar  
1012 information designated by the Department of Administrative Services  
1013 as describing approved contracting processes and procedures; and

1014 (5) Prominent features to encourage the active recruitment and  
1015 participation of small businesses and women and minority owned



1016 enterprises in the state contracting process.

1017 (c) All state agencies in the executive branch, the constituent units of  
 1018 the state system higher education and quasi-public agencies shall post  
 1019 all bids, requests for proposals and all resulting contracts and  
 1020 agreements on the State Contracting Portal and shall, with the  
 1021 assistance of the Department of Administrative Services and the  
 1022 Department of Information Technology as needed, develop the  
 1023 infrastructure and capability to electronically communicate with the  
 1024 State Contracting Portal.

1025 (d) All state agencies in the executive branch, the constituent units  
 1026 of the state of system higher education and quasi-public agencies shall  
 1027 develop written policies and procedures to ensure that information  
 1028 posted to the State Contracting Portal is done in a timely, complete and  
 1029 accurate manner consistent with the highest legal and ethical  
 1030 standards of state government.

1031 (e) The Department of Administrative Services shall periodically  
 1032 report to the office of the Governor and the State Contracting  
 1033 Standards Board on the progress of all state agencies in the executive  
 1034 branch, the constituent units of the state system of higher education  
 1035 and quasi-public agencies in developing the capacity, infrastructure,  
 1036 policies and procedures to electronically communicate with the State  
 1037 Contracting Portal as well as the Department of Administrative  
 1038 Services' progress toward establishment and maintenance of the State  
 1039 Contracting Portal.

1040 Sec. 21. Subdivision (19) of subsection (d) of section 2c-2b and  
 1041 section 4b-3 of the general statutes are repealed. (*Effective October 1,*  
 1042 *2009*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section

Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>from passage</i>	New section
Sec. 9	<i>October 1, 2008</i>	New section
Sec. 10	<i>October 1, 2009</i>	New section
Sec. 11	<i>October 1, 2008</i>	New section
Sec. 12	<i>January 1, 2008</i>	New section
Sec. 13	<i>from passage</i>	4b-91(i)
Sec. 14	<i>from passage</i>	New section
Sec. 15	<i>from passage</i>	1-92(a)
Sec. 16	<i>January 1, 2008</i>	New section
Sec. 17	<i>from passage</i>	New section
Sec. 18	<i>October 1, 2007</i>	New section
Sec. 19	<i>October 1, 2007</i>	4b-1(b)
Sec. 20	<i>from passage</i>	New section
Sec. 21	<i>October 1, 2009</i>	Repealer section

**GAE**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Contracting Standards Board; Department of Administrative Services; Various State Agencies	All Funds - Cost	Significant	Significant

#### **Municipal Impact:**

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Cost	See Below	See Below

### **Explanation**

#### **State Contracting Standards Board**

The bill establishes, from passage, a 13-member State Contracting Standards Board (SCSB) and permits the board to hire an executive director, a chief procurement officer, and other staff to carry out the responsibilities described in the bill. The salary costs are estimated to be \$750,000 annually. A per diem of \$200 is provided for the board members. The cost for per diem reimbursements is estimated to be \$300,000 annually.

The bill requires SCSB, with the Department of Administrative Services (DAS), to develop a standardized state procurement and project management education and training program. It is anticipated that the FY 08 cost to research, develop and establish the training program is approximately \$275,000. There will be a significant cost in FY 09 to implement the training program; the cost could range from \$250,000 - \$500,000. Once the initial education and training is complete the ongoing out year training costs should substantially decrease.

sHB 7077, the Governor's budget bill, included funding for the SCSB in the amount of \$995,088 in each of FY 08 and FY 09. sHB 7077, the budget bill, as favorably reported by the Appropriations Committee eliminates all FY 08 - FY 09 funding for the SCSB.

The bill transfers the powers and duties of the State Properties Review Board (SPRB) to the SCSB effective October 1, 2008. The SCSB will function as the successor agency to the SPRB. It also requires the SPRB to form the State Properties Review Subcommittee within the SCSB.

It is assumed that three positions (excluding the executive director) will be transferred from the SPRB to the Contracting Standards Board in FY 09. The projected total Personal Services cost for these three positions (Real Estate Examiner, Executive Secretary, and Secretary 1) is approximately \$145,000 in FY 09 (nine months) and \$201,500 in FY 10. In addition, it is assumed that the three board members of the newly established State Properties Review Subcommittee would receive per diem reimbursements since current SPRB members receive them. The bill does not indicate the level of reimbursement, but the current SPRB has six members who would receive a total of \$155,000 in per diem reimbursements in both FY 09 and FY 10.

The bill requires the SCSB to audit state contracting agencies at least every three years, and permits the SCSB to enter into an agreement with the Auditors of Public Accounts (the Auditors) to perform this requirement. If an agreement is reached that the Auditors can perform the contracting audit work as part of their current biennial state agency audits, then this new responsibility would not require additional staff or resources.

The bill establishes a Contracting Standards Advisory Council and a Vendor and Citizens Advisory Panel, which is not anticipated to result in a fiscal impact.

### **Uniform Procurement Code**

The uniform procurement code places numerous administrative requirements and responsibilities on state contracting agencies. These new duties will create a significant workload increase for state contracting agencies which may necessitate additional staff or resources based on the number of contracts each agency administers. Larger state contracting agencies (e.g., DSS, DCF, DAS, DOT, DMR) may each need to hire administrative staff positions to handle the procurement code's requirements.

### **Privatization Contracts**

The bill establishes procedures that state agencies, quasi-public agencies, and constituent units of higher education must follow before entering into a privatization contract valued at \$500,000 or more, with certain exceptions. These procedures are effective from passage until the signing into law of the uniform procurement code.

This bill requires that a cost benefit analysis be performed before contracting with a private entity to provide services that would substitute for services provided by state employees. A state agency would incur costs to perform the required analysis, the magnitude of which would depend on the significance of the contract and staff required to perform these functions.

The bill places requirements on privatization contracts between the state and a for-profit contractor that could increase the cost of privatizing specific contracts, or may reduce the potential savings that otherwise would be achieved. The bill requires contracts to include certain wage and other labor related requirements that could impact the cost effectiveness of privatizing.

It is anticipated that any increase to the cost of privatizing services due to the bill's provisions would be evaluated against the cost of the provision of services by state employees.

The bill also requires that state agencies must submit their privatization cost benefit analysis to the Auditors who may review and

comment. Depending on the number of cost benefit analyses submitted, the Auditors may need additional staff or resources to handle this increased workload. The starting salary for an Auditor II position is approximately \$60,000. It is anticipated that the Auditors can review up to 10 cost benefit analyses each year without requiring additional staff or resources.

The bill also requires contractors to submit to performance audits by the Auditors, on a periodic basis, as determined by the Auditors. Depending on the number of contractor performance audits, the Auditors may need additional staff or resources to handle this increased workload. It is anticipated that the Auditors can conduct 5 contractor performance audits each year without requiring additional staff or resources.

#### **Privatization – Human Services Contracts**

The bill establishes privatization contract requirements for various state agencies. Although it is not clear if every state agency with a human services contract (which includes: the Departments of Mental Retardation, Mental Health & Addiction Services, Children and Families, Public Health, Social Services and Correction; the Judicial Department and the Council to Administer the Children's Trust Fund) would fall within the provisions of the privatization definition, it is anticipated that a large percentage of the \$1.3 billion in contracts would.

The bill places various wage and other contractual requirements on privatization contracts (new, renewed, modified, extended or re-bid on contracts that are \$500,000 or more). Until January 1, 2010 a privatization contract with nonprofit human services providers shall comply with the following provisions:

1. Establishment of a minimum wage rate that is no less than step one of the grade or classification under which the most comparable state agency employee is paid and shall include comparable healthcare and pension costs;

2. No more than 20% of the contract shall represent administrative costs;
3. An additional amount of up to 40% of the contract total value shall be added and used for the sole purpose of providing higher wages or salaries for employees who are beyond entry level;
4. Provided that the total amount funded by the state for these contracts is not increased by more than 10% a year as a result of these provisions; and
5. Finally, the 10% increase may be exceeded if required by state or federal law or by the provisions of a collective bargaining agreement.

The 10% cap is likely to be triggered before the full implementation of the wage provisions. Therefore to the extent that the bill's 10% per year cap on increases to privatization contracts would impact \$1 billion in private provider contracts, \$100 million in costs would result (each subsequent year, the increase would continue to grow). However, it should be noted that the bill authorizes contractual cost increases (to be incurred by the state) in excess of 10% when called for by collective bargaining agreements involving contractors and their employees. It is unclear, therefore, to what extent actual cost increases will be restricted by the cap of 10% in practice.

*An example of an impacted agency is the Department of Mental Retardation (DMR), one of the larger human services agencies. It is estimated that over \$460 million of DMR's private provider contract funding (167 contracts) would be impacted (non rate-based). For illustrative purposes 10% of this would be \$46 million. Applying just the established wage rate (which includes the health and pension provisions) is estimated to result in over \$140 million to DMR's current contracts (this does not include the above mentioned additional 40% or administrative provision) and would be reduced by the 10% cap.*

It is unclear how the provision requiring not more than an additional 40% of the value of the contract to be utilized for the sole purpose of providing higher wages or salaries for employees who are not entry level or who have additional needed skills would be allocated to each position under a given contract. The minimum wage rate as established in the bill includes the entry level rate to an equivalent position plus the associated health and pension benefits of a state employee. When these two wage and salary provisions are applied, it is uncertain how the final 10% capped increases will be allocated within the contract. These contract increases would be applied in FY 08, FY 09 and FY 10. Ongoing costs related to the wage and benefits in the out-years would depend on the wage related provisions as set forth in the procurement code (upon adoption).

There are further restrictions if a privatization contract results in layoffs, transfers or reassignment of state employees. This additional provision would lead to increased costs, which are unknown at this time due to the uncertainty of future layoffs. Adequate resources would have to be provided to those laid off employees for the purpose of encouraging and assisting them to organize and submit a bid to provide the services that are subject to the privatization contract. In addition under the lay-off provision, a state agency would be required to do various analyses of the cost and benefits of privatizing such services. The increased cost to state agencies would depend on the frequency and volume of contracts requiring such analysis.

It is unclear how the timeline of the procurement code implementation will impact the various human services agencies that have privatization contracts. Although the uniform procurement code shall not apply to the renewal, modification, extension or re-bidding of privatization contracts in effect on or before the effective date (upon passage) until January 1, 2010, to the extent that an impacted state agency would be required to meet the various provisions of the code with each new contract, a cost would be incurred. The magnitude of this cost would be determined by the volume and timing of the contracts and associated staff resources required to comply.



In the course of complying with the privatization contracting standards as set forth in the bill, each state agency will incur administrative costs. These costs are anticipated to be significant in magnitude for heavily impacted state agencies. Costs would be associated with additional administrative staff needed to: conduct comparative cost analysis; evaluate contract submittal and ensure compliance with wage, benefits, and administrative cost standards; ensure notification of affected employees and collective bargaining agents; prepare employee impact statements; provide procurement information to the SCSB; and provide the Secretary of State, concomitantly, the required contract certification and analysis. Due to the timeline set forth in the bill, the administrative cost burden on state agencies will be fully realized in FY 10.

*The Department of Children and Families (DCF) is another large human services agency, having more than \$170 million in contracts with over 180 private providers. Two administrative staff, at an annual cost of approximately \$100,000, would be required to allow the agency to perform new duties when entering into purchase of service contracts. These duties would include, but not be limited to: conducting cost analyses; reviewing contracts and financial documents for contractor compliance with reporting requirements; and assisting in report preparation/submittal.*

It should be noted that, historically, the private provider increases, when included in the Appropriations Act, have been appropriated based on a percentage cost of living increase (COLA). Additionally, certain rates established in statute, have been determined in accordance with funding included in the budget.

### **Purchase of Service Agreements**

The bill requires the Office of Policy and Management (OPM) to establish procedures for use by state agencies when entering into purchase of service agreements, whereby 50% of any unexpended funds allocated in a contract with a contracting nonprofit agency, partnership or corporation will be retained by the nonprofit entity, and

the rest will be remitted to the contracting agency. (It should be noted that this is current practice for the Department of Mental Retardation and its provider agencies). This will preclude future savings, as the non-profit entities will retain half of the unexpended funds, which would otherwise lapse or be used to offset other costs. It is anticipated that OPM can establish these procedures for use by state agencies when entering purchase of service agreements within the normal budgetary resources of the agency. Various agencies may experience administrative costs to the extent that additional staff may need to be devoted to monitoring and tracking expenditure reports and provider adherence to contractual requirements to determine if surplus dollars are eligible for retention.

### **Judicial Branch Procurement Code**

By January 1, 2009, the bill requires the Judicial Branch to prepare a procurement code. Presently, the Judicial Department has the in-house expertise necessary to develop such a code. It is anticipated that the Judicial Department would incur only minimal costs in order to comply with the bill's requirements.

### **Ethics Training**

The bill requires that state employees involved in procurement, prequalified contractors, and substantial subcontractors take an ethics training course. The course may be developed and provided by the Office of State Ethics or by any person, firm or corporation provided such course is approved by the SCSB. Currently, the staff at the Office of State Ethics is not adequate to develop and provide this training and therefore additional resources would be necessary. If the training were provided by a private entity the costs may be significant depending on the number of individuals required to take the training class.

### **Municipalities**

The uniform procurement code applies to municipalities. The code requires that a cost benefit analysis be performed before privatizing.

Municipalities will incur costs to perform the required analysis, the magnitude of which would depend on the significance of the contract and staff required to perform these functions. The procurement code also places requirements on privatization contracts that could increase the cost of privatizing specific contracts, or may reduce the potential savings that otherwise would be achieved.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, unless otherwise identified above.

**OLR Bill Analysis****sSB 41*****AN ACT CONCERNING CLEAN CONTRACTING STANDARDS.*****SUMMARY:**

This bill establishes a State Contracting Standards Board (SCSB) as an independent Executive Branch state agency and the successor agency to the State Properties Review Board (SPRB). It dissolves the SPRB on October 1, 2008 and transfers its duties and responsibilities to the SCSB on that date. The new board has various other responsibilities associated with the state contracting processes. It must establish a uniform procurement code, audit state contracting agencies, and discipline them for failure to comply with the bill or the uniform procurement code. "State contracting agencies" are (1) state agencies other than the SCSB and the Judicial and Legislative branches and (2) municipal, quasi-public and any other agencies that receive state funds.

The bill requires the Judicial Branch to prepare its own procurement code. It establishes a procedure for the legislature to exempt construction contracts from the competitive bidding process, and establishes privatization rules and procedures.

The bill requires the Office of Policy and Management to establish procedures for state agencies to use when entering purchase of service agreements. The procedures must require agencies to pay 50% of any money left at the end of a contract to a nonprofit provider whose services met the contract's requirements for number, type, and quality of services if there was an agreed upon price for such services, a set cost for such services, or a flat grant for an agreed upon level of services.

The bill requires the Department of Public Works to (1) classify the

cause for any change order that occurs on any project it oversees as agency requested, error or omission, or field conditions and (2) report them to SPRB.

It allows the commissioner to grant a third party a license (i.e., permission, other than a lease) for up to one year, including extensions, to use and occupy any state property, other than UConn and Judicial property, under his care and control. Just as with leases, the Office of Policy and Management secretary and the SPRB must approve the license for substance and the attorney general must approve it for form.

The bill requires the Department of Administrative Services (DAS) to maintain a single electronic portal for posting most contracting opportunities in the state.

Lastly, it specifies that regulations adopted by the Citizen's Ethics Advisory Board to carry out its duties do not apply to any judge trial referee assigned to review and decide ethics cases.

EFFECTIVE DATE: Upon passage, except that the (1) provisions on change order and licenses are effective October 1, 2007; (2) provisions transferring the duties of the SPRB and requiring the Judicial Department's procurement code are effective January 1, 2008; (3) provisions establishing the Contracting Standards Advisory Council and allowing contract solicitation contests are effective October 1, 2008; and (4) provisions on agency appeals and eliminating the SPRB are effective on October 1, 2009.

## **§§ 2-6 — SCSB**

The bill establishes the 13-member SCSB as a separate, independent, Executive Branch agency. The governor appoints seven board members and the top six legislative leaders appoint the remaining six.

The legislature must confirm each appointment. Each member's term is coterminous with that of his or her appointing authority. Each appointing authority fills any vacancy in his or her appointment.

Seven members of the board constitute a quorum, which is required to transact business. The bill requires the board to appoint its chairperson.

***Board Member Qualifications***

Board members must have education, training, or experience received in five consecutive years of the 10 years immediately preceding their appointment, in several of the following areas:

1. procurement;
2. contract negotiation, selection, and drafting;
3. contract risk assessment;
4. competitive bidding and procurement procedures;
5. real estate transactions, including real estate and building purchases, sales, and leases ;
6. business insurance and bonding;
7. building construction and architecture;
8. ethics in public contracting;
9. federal and state laws, procurement policies, and regulations;
10. outsourcing and privatization analysis;
11. small and minority business enterprise development;
12. engineering and information technology; or
13. personnel and labor relations.

“Contract risk assessment” means (1) the identification and evaluation of loss exposures and risks, including business and legal risks associated with contracting, and (2) the identification, evaluation, and implementation of measures available to minimize potential loss

exposures and risks.

**Board Staff**

The bill requires the governor to appoint and the legislature to confirm an executive director who serves as an ex-officio, nonvoting board member. The board must annually evaluate the executive director's performance and may remove him or her for cause. The executive director must report to the board's chairperson. In consultation with the chief procurement officer, he or she must (1) prepare a comprehensive plan of the board's administrative functions, (2) coordinate the board's budget and personnel activities, (3) provide for the board's administrative organization to be examined for economy and efficiency, (4) act as the board's external liaison, and (5) perform any other duties the chairperson assigns. The executive director may contract as necessary to carry out his or her duties.

The board must appoint a chief procurement officer (CPO) for a term not to exceed six years, unless reappointed. The CPO serves at the board's pleasure. The board chairperson supervises the CPO and the entire board annually evaluates him or her.

The CPO is responsible for carrying out the board's policies, including oversight, investigation, auditing, agency procurement certification, procurement and project management, training, and enforcement. He or she also ensures that state contracting agencies apply the policies when they screen and evaluate current and prospective contractors. The CPO may contract as necessary for the discharge of his or her duties, including recommending best practices and assisting state agencies.

The CPO must also:

1. oversee state contracting agencies' compliance with the uniform procurement code;
2. monitor and assess the procurement duties of each agency's procurement officer;

3. administer the certification system (see below) and monitor code compliance, including the education and training, performance, and qualifications of agency contract officers;
4. review and monitor the procurement processes of each state contracting agency, quasi-public agency, and institution of higher education; and
5. serve as chairperson of the Contracting Standards Advisory Council and an ex-officio member of the Vendor and Citizen Advisory Panel (see below).

The bill authorizes the board to (1) employ any other staff it considers necessary and (2) contract with consultants and professionals on a temporary or project basis.

### ***Board Ethics and Operations***

The bill prohibits anyone from serving on or working for the board if (1) he or she is a full-time state or municipal employee or (2) he or she or his or her spouse, child, stepchild, parent, or sibling is directly involved in any enterprise that does business with the state. The bill requires the Citizen's Ethics Advisory Board to adopt regulations clarifying the meaning of "directly or indirectly involved in any enterprise" by January 1, 2009.

It requires board members and employees to file with the board and the Office of State Ethics annual financial statements, by May 1, that disclose the sources of any income over \$1,000 for the preceding calendar year and the name of any business with which they are associated. By law, an associated business is one owned by an official, employee, or immediate family member, or where any one of them (1) serves as an officer, director, or compensated agent or (2) owns at least 5% of the stock in any class. The financial statement is a public record and subject to disclosure under the Freedom of Information Act (FOIA).

Any board employee or member who violates the employment



prohibition or fails to file the statement violates the State Ethics Code and may be subject to the code's penalties, including a fine of up to \$10,000.

The bill requires the board to adopt any rules it deems necessary to conduct its internal affairs, including appellate rules of procedure and reviews of appeals by bidders.

### ***Budget and Compensation***

The bill requires the board's budget, upon approval of its members, to pay its reasonable expenses. It requires board members to be paid a \$200 per diem.

### ***Uniform Procurement Code***

By February 1, 2008, the bill requires the SCSB to prepare a uniform code for use by state contracting agencies when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of real property, supplies, or services, including construction services, material, or supplies. The uniform code does not apply to the expenditure of federal assistance or contract funds if federal law provides procurement procedures that are inconsistent with the uniform procurement code.

The bill requires the board to use the comprehensive review of existing state contracting and procurement laws, regulations, and practices completed by the SCSB established by Executive Order 7B and use any appropriate, existing procedures and guidelines when preparing the code. It requires each state contracting agency to provide its procurement information if the board asks. The bill gives the board access to all such agencies' information, files, and records it deems necessary. However, the board cannot disclose documents exempt from disclosure under FOIA.

The bill requires the board to submit the code to the legislature for approval by February 1, 2008. It requires the code to be referred to the Government Administration and Elections (GAE) Committee, which must report it by resolution. It makes the code effective on the day

following the last day of the 2008 regular session, unless the General Assembly, by resolution, rejects it. The General Assembly may reject it by a three-fifths vote of each house. The code is deemed approved if the General Assembly fails to approve or reject it by the end of the 2008 regular session.

The bill requires the board to provide the governor and GAE Committee with recommendations on the uniform procurement code. It does not specify when the recommendations are due or their frequency.

**Code Requirements.** The bill requires the code to:

1. establish uniform state contracting agencies' standards and practices;
2. ensure the fair and equitable treatment of all businesses and people involved in the state's procurement system;
3. include a process for maximizing the use of small contractors and minority business enterprises;
4. provide increased economy in state procurement activities and maximize purchasing value to the fullest extent possible;
5. ensure that state contracting agencies procure supplies, material, equipment, services, real property, and construction in a cost-effective and responsive manner;
6. preserve and maintain state agencies' contracting or procurement procedures that represent best practices, including their discretion and authority to disqualify contractors and terminate contracts;
7. include a process to improve contractor and state contracting agency accountability;
8. establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate;

9. simplify and clarify the state's contracting standards and procurement policies and practices, including procedures for competitive sealed bids or proposals, small purchases, and sole source, special, and emergency procurements;
10. subject the renewal, modification, extension, or rebidding of a privatization agreement in effect on, before, or after the bill's passage or reentered after that date to the procurement code, beginning January 1, 2010; and
11. provide a process for competitive sealed bids and proposals, small purchases, sole source, emergency, and special procurements, best-value selection, and qualification-based selection, and the conditions for their use.

"Best-value selection" means a process to award contracts based on quality and costs. "Qualification-based selection" means a process to award contracts based primarily on contractor qualifications and a fair and reasonable price. "Emergency procurements" are those necessary because of a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or that requires immediate action to prevent or reduce loss or impairment of life, health, property, or essential public services, or needed in response to a court order or settlement agreement.

**Code Privatization Standards.** The code must also include standards for state contracting agencies to evaluate (1) proposals to privatize state or quasi-public agency services and (2) privatization contract bid proposals. At a minimum, these standards must require state and quasi-public agencies to:

1. complete an analysis before deciding to privatize services that examines all direct and indirect state costs or savings and the privatization contract's effect on the public health and safety of state residents who may use the services;
2. give their affected employees and, where applicable, employee

unions, adequate notice;

3. prepare an employee impact statement, including measures a bidder must take to retain the agency's qualified employees;
4. set fair wages based on objective standards, such as the established wage rate; and
5. provide their employees with adequate information and resources that would encourage and help them to organize and submit a bid to provide the services that are the subject of any privatization contract that would require at least 100 employees to be laid off, transferred, or reassigned.

The standards must also require (1) bidders to disclose all relevant information about their past performance and pending or concluded legal or regulatory proceedings or complaints, including compliance with state fair employment practices standards and federal fair employment and discrimination standards and (2) privatization contracts to include provisions for for-profit contractors to offer available employment positions to qualified regular employees of the contracting state agency who satisfy the contractor's hiring criteria and whose jobs were terminated because of the contract.

The "established wage rate" means different things depending on the contractor. If the contractor is a for-profit business, it means a minimum wage rate for employee positions with duties substantially similar to those performed by a regular agency, which rate is the lesser of (1) step one of the grade or classification under which the comparable regular agency employee is paid or (2) the labor commissioner's standard private sector wage rate for the position. It must include a percentage representing the normal costs of health care and pension benefits for comparable state employees hired at the time of the contract.

For nonprofit providers, it means a rate no less than step one of the grade or classification for the most comparable regular agency

employee hired at the time of the contract, including a percentage of the normal health and pension benefits costs. For nonprofit providers that are less than 90% state funded, the established rate may be lowered if all additional funding for wage and benefits required by privatization is used to assure that all similarly situated workers are paid, as closely as possible, to employees covered by the state contract and to other employees providing the services or performing functions comparable to those covered by the state contract.

“Wage” means compensation for employee services, including salaries. A “nonprofit agency” is any nonprofit business or state-assisted private institution of higher education that provides services pursuant to a contract with a state or nonstate entity.

EFFECTIVE DATE: Upon passage

#### **§ 4 — Transferred Powers and Duties**

Except as otherwise provided, the bill transfers to the board the rights, powers, duties, and authority related to the state’s procurement policies, now vested in, or exercised by, any state contracting agency. These consist of the right, power, duty, or authority:

1. to acquire, manage, control, warehouse, sell, and dispose of supplies, services, and construction;
2. related to any state contracting or procurement processes, including, leasing and property transfers; purchasing or leasing supplies, material, or equipment; consultant or consultant services; purchase of service agreements; or privatization contracts; and
3. related to building construction contracts.

#### **Board’s Oversight of Procurement Practices**

Except as otherwise provided by law, the board is responsible for:

1. recommending the repeal of repetitive, conflicting, or obsolete state procurement laws;

2. developing, acquiring, implementing, overseeing, and managing information systems for state procurement;
3. developing, publishing, and maintaining the uniform procurement code for all state contracting agencies;
4. helping state contracting agencies to comply with the code by providing guidance, models, advice, and practical assistance to their staff related to (a) buying the best service at the best price; (b) properly selecting contractors; and (c) drafting contracts that achieve state goals of accountability, transparency, and results-based outcomes and protect taxpayers' interests; and
5. adopting regulations and policies to carry out code provisions.

Any regulations the board promulgates supersede a state contracting agency's conflicting regulation, as determined by the board.

***Procurement Legislation, Regulations, and Policies.*** The board must review and approve proposed legislation and regulations prior to promulgation. Regulations are deemed approved if it does not approve them or issue comments within 30 days after receipt. It can institute policies on procuring, managing, controlling, and disposing of supplies, services, and construction, including:

1. prequalification, suspension, debarment, and reinstatement of prospective bidders and contractors;
2. small purchase procedures;
3. conditions and procedures for delegating procurement authority, procuring perishables and items for resale, using source selection methods that the code authorizes, emergency procurements, and selecting contractors by processes or methods that restrict full and open competition;
4. opening or rejecting bids and offers and waiving informalities;

5. confidentiality of technical data and trade secrets submitted by actual or prospective bidders or proposers;
6. partial, progressive, and multiple awards;
7. supervision of storerooms and inventories, including determining appropriate stock levels and the management, transfer, sale, or other disposal of publicly owned supplies;
8. definitions and classes of contractual services and procedures for acquiring them;
9. regulations for conducting cost and price analysis;
10. use of payment and performance bonds;
11. guidelines for using cost principles in negotiations, adjustments, and settlements; and
12. identifying procurement best practices.

***Board to Coordinate Procurement and Contracting Officers.***

The board must coordinate the procurement and contracting officers in each state contracting agency.

The bill requires the head of each state contracting agency to appoint a senior official to act as a liaison between the agency and the chief procurement officer on the agency's procurement activities. The activities include (1) implementing and complying with the uniform procurement code and any policies or regulations the board adopts and (2) coordinating agency procurement employees' training and education.

The appointed official is the agency's procurement officer. He or she must assure that contractors are properly screened before a contract is awarded, evaluate their performances during and at the end of a contract, submit written evaluations to a central data repository that the board designates, and create a project management plan that includes annual reports to the board on the agency's procurement

projects.

### ***Agency Procurement Certification***

Beginning July 1, 2008, the bill requires the board to review and certify that a state contracting agency's procurement processes comply with the code. It must accomplish this by (1) establishing procurement and project management education and training criteria; (2) certifying agency procurement and contracting officers; and (3) approving an ethics training course, including a course for state employees involved in procurement and prequalified state contractors and substantial subcontractors. The Office of State Ethics or any person, firm, or corporation may develop and provide the training, but the board must approve the course.

Employees must maintain the certification in good standing at all times while performing procurement functions.

The board must recertify each state contracting agency's procurement processes at least every three years, notify them of any certification deficiency, and exercise its enforcement authority if it finds noncompliance.

### ***Contract Data Reporting***

The bill requires the board to "define the contract data reporting requirements to the board for state agencies." It is unclear what this means. However, it may mean that the board must inform state agencies of their duty to report data on:

1. the number and type of state contracts currently in effect statewide;
2. the contracts' terms and dollar values;
3. their client agencies;
4. services purchased under such contracts;
5. contractor names;



6. their evaluations of contractors' performances, including records on suspensions or disqualifications and assurances that the information is available on the state contracting portal; and
7. all contracts and contractors awarded without full and open competition, including the reasons for the decisions and the names of the authorities that approved them.

***Procurement and Project Management Training***

The SCSB, with the advice and assistance of the administrative services commissioner, must develop a standardized state procurement and project management education and training program. The board must adopt implementing regulations.

The program must develop education, training, and professional development opportunities for state contracting agencies' employees with procurement responsibilities. It must educate the employees on general business acumen and on proper purchasing procedures as established in the uniform procurement code. The program must emphasize ethics, fairness, consistency, and project management.

The program must include:

1. training and education in federal, state, and municipal procurement processes, including the state procurement code and principles of project management;
2. training and education courses developed in cooperation with the Office of State Ethics, Freedom of Information Commission, State Elections Enforcement Commission, Commission on Human Rights and Opportunities, Attorney General's Office, and any other state agency the board determines is necessary;
3. technical assistance to help state contracting agencies, quasi-public agencies, constituent units of higher education, and municipalities implement the procurement code, regulations, policies, and standards the board develops;

4. training for current and prospective contractors, vendors, and others seeking to do business with the state; and
5. training and education for state employees in best procurement practices in state purchasing with the goal of achieving the level of acumen necessary to achieve the bill's objectives.

The bill requires state contracting agencies' employees responsible for buying, purchasing, renting, leasing, or otherwise acquiring any supplies, service, or construction to participate in the program. The board must give employees who complete the program a document acknowledging their participation. It must give the governor and legislature an annual status report on the training and education program.

### ***Compliance Audits***

The bill requires the board to audit state contracting agencies at least once every three years and report on their compliance with the uniform procurement code. During the audit, the bill gives the board access to all of the agencies' contracting and procurement records and authority to interview people responsible for awarding and negotiating contracts or procurement. The board can contract with the state auditors to conduct the audit.

The board must identify in the compliance report any process or procedure that is inconsistent with the uniform procurement code and corrective measures to achieve code compliance. It must deliver the report, which is a public record, to the contracting agency within 30 days after the audit is completed.

### ***Disciplinary Actions for Noncompliance and Other Violations***

The board may review, terminate, or recommend terminating a contract or procurement agreement for cause after consulting with the attorney general and giving the agency and contractor 15 days notice. "For cause" means (1) engaging in activities prohibited under the State Ethics Code; (2) wanton or reckless disregard of any state contracting and procurement process by anyone substantially involved in the

contract or with the state contracting agency; or (3) notification from the attorney general to the state contracting agency that a whistleblower investigation indicates that the contract process was compromised by fraud, collusion, or other serious ethical improprieties.

The decision to terminate a contract must be preceded by the board's consultation with the contracting agency to determine the impact of an immediate termination and a joint decision by the board and the agency that immediate termination will not cause imminent peril to public health, safety, or welfare. The board's decision to terminate must be approved by a two-thirds vote of its members present and voting. The board must notify the state contracting agency and any other affected party of the termination.

The board may (1) restrict or terminate a state contracting agency's contracting or procurement authority or (2) recommend that a state contracting agency restrict or terminate an employee's or agent's authority to enter a contract or procurement agreement upon a two-thirds vote, after 15 days notice and a hearing, if it finds the agency or employee failed to comply with statutory contracting and procurement requirements and showed a reckless disregard for applicable policies and procedures. Any restriction or termination stays in effect until the agency implements corrective measures and complies with the code. Any agency restriction or termination must be in the state's best interest. The board must arrange for the exercise of the agency's contracting power during the restriction or termination.

## **§ 9 — CONTESTING STATE CONTRACT SOLICITATIONS OR AWARDS**

The bill establishes a process for bidders on state contracts to contest the way contracts were solicited or awarded or to contest an unauthorized or unwarranted, noncompetitive selection process. A bidder can file a complaint with the commissioner or director of the contracting agency within 14 days after he or she knew or should have known about the facts forming the basis for the complaint.

The bill authorizes the commissioner, director, or his or her designee to resolve or settle the complaint. If the complaint is not resolved, the bill requires the agency head (or his designee) to issue a written decision within 30 days after receiving the complaint and provide a copy to the complaining bidder. The decision must:

1. describe the procedure the agency used to solicit and award the contract,
2. indicate the agency's findings on the merits of the bidder's complaint, and
3. inform the bidder of his right to appeal to the SCSB.

## **§ 10 — APPEALS FROM AGENCY DECISIONS**

The bill permits bidders to appeal an agency decision on its contract solicitation and awards processes to the SCSB within 14 days after receiving it. Each bidder must state the facts supporting his or her claim in enough detail for the SCSB to determine whether the process for soliciting or awarding the contract failed to comply with the uniform procurement code or involved an unauthorized or unwarranted, noncompetitive selection process. The appeal does not automatically prohibit the award or execution of the contested contract.

The bill requires the SCSB to create a subcommittee of three of its members to review these appeals and vote on whether a bidder's allegation has been demonstrated. A unanimous vote is dispositive. If the vote is split, the full membership must review the appeal and dispose of it by a vote of two-thirds of its members present and voting. (The bill does not specify what happens if the vote of the full board is less than two-thirds.) And any three board members may request that the full board review an agency's deliberating or awarding process.

The subcommittee, or the full board in the event of a split vote, must issue a written decision, or take other appropriate action, on each appeal and provide a copy of any decision to the bidder. The

subcommittee must act within 90 days after receiving the appeal. The full committee must act within 90 days after receiving the appeal from the subcommittee. If the subcommittee or full board decides in the bidder's favor, the board must direct the state contracting agency to take corrective action within 30 days after the decision date. A decision by the full board or the appeals review committee is final and not subject to appeal.

## **§ 11 — CONTRACTING STANDARDS ADVISORY COUNCIL**

The bill establishes a nine-member Contracting Standards Advisory Council to discuss problems with procurement processes and recommend improvements to the SCSB. The council can conduct studies, research, and analyses and issue reports and recommendations on matters within the SCSB's jurisdiction.

The governor designates the council's members. They must represent state contracting agencies, including at least one representative each from the Administrative Services, Transportation, and Public Works departments. The council must meet at least once a year.

The bill establishes a 15-member Vendor and Citizen Advisory Panel. The governor appoints three members and the six top legislative leaders each appoint two. No more than six members can be vendors experienced in state procurement. The remaining nine must be citizen members with education, training, or experience, received in five consecutive years of the 10 years immediately preceding their appointment, in several of the following areas:

1. government procurement;
2. contract negotiation, drafting, and management;
3. contract risk assessment;
4. preparing requests for proposals, invitations to bid, and other procurement solicitations;

5. evaluating proposals, bids, and quotations;
6. real property transactions;
7. business insurance and bonding;
8. the State Code of Ethics;
9. federal and state laws, policies, and regulations;
10. outsourcing and privatization proposal analysis;
11. government taxation and finance; and
12. the state set-aside program.

The chief procurement officer chairs the panel and serves as an ex-officio member. The panel makes recommendations to the board on best practices in state procurement processes and project management and other issues pertaining to system stakeholders.

#### **§§ 12 & 21 — STATE PROPERTIES REVIEW BOARD**

The bill names the SCSB as a successor department to the SPRB and transfers SPRB's powers, duties, obligations, and other government functions to SCSB beginning October 1, 2008. By the same date, the bill requires the SCSB to establish a three-member subcommittee, called the State Properties Review Subcommittee, to perform SPRB's duties in accordance with SCSB's rules and procedures.

#### **§ 13 — FAST-TRACK CONSTRUCTION PROJECTS**

The bill limits the legislature's ability to exempt construction projects from the competitive bidding process. It requires the legislature to approve "fast-track" legislation, in whole, by a two-thirds vote of the members of each chamber. If this legislation is rejected, the fast-track proposal is not valid and cannot be implemented for the project. The legislation is deemed rejected if the legislature fails to vote to approve it (1) by the end of the regular session during which it is filed, (2) before the end of the next regular

session if the legislature is not in regular session when the legislation is filed, or (3) before the end of any special session called to consider the legislation. If the legislation is filed less than 30 days before the end of a regular session, the legislature must vote to approve or reject it within 30 days after the first day of (1) a special session convened for that purpose or (2) the next regular session, otherwise it is deemed rejected.

By law, if the legislature approves the legislation, the SPRB must review the contract and approve or disapprove it no later than 30 days after the public works commissioner submits it to the board. Beginning October 1, 2009, the bill requires the SCSB's State Properties Review Subcommittee to conduct the review. Consistent with existing law, the contract is deemed approved if the review does not occur within the 30 days.

#### **§ 14 — PRIVATIZATION CONTRACTS**

Between its passage and the date the uniform procurement code becomes law, the bill prohibits any executive branch state agency, quasi-public agency, or constituent unit of higher education from entering a privatization contract unless it complies with the provisions of this section. The prohibition does not apply to procurement contracts needed to (1) address a sudden, unexpected occurrence that poses a clear and imminent danger to public safety; (2) prevent or mitigate the loss or impairment of life, health, property, or essential public services; or (3) comply with a court order, settlement agreement, or other similar legal judgment.

However, certain contracts only have to comply with certain provisions in this section. Privatization contracts (1) with a nonprofit provider and (2) in effect on or before the bill's passage that are renewed, modified, extended, or rebid only have to comply with the wage requirement provisions if they do not result in state employee layoffs, transfers, or reassignments (see Wage Requirements below). The exemption for nonprofit contracts expires on January 1, 2010. Additionally, no employee may challenge a proposed

privatization contract with a nonprofit provider unless the contract would result in state employee layoffs, transfers, or reassignments (see Lawsuit Challenges below).

“Privatization contracts” means those (1) between a state contracting agency and a person to provide services substantially similar to, or in place of, those provided by state employees and (2) that cost the state \$500,000 or more. The term does not include an agreement to provide only legal services, litigation support or management, or financial consulting. The bill prohibits any funds a contractor receives from a privatization contract from being used for lobbying.

### ***Conditions Precedent to Privatization Contracts***

Under the bill, the Judicial Department and any covered agency or constituent unit can enter a privatization contract if the:

1. contract is cost effective and fiscally prudent when compared to what it costs the state to provide the services, including all direct and indirect costs to the state and the impact of privatization on the public health and safety of state residents who use the privatized services;
2. contracting entity requires contractors to include the information the bill requires in their bid submissions;
3. contracting entity prepares a cost-benefit analysis; and
4. contracting entity notifies the collective bargaining units representing its employees of the plan to solicit bids for a privatization contract and helps the employees organize and submit a bid to provide the services.

Before soliciting bids for a privatization contract, the bill requires the soliciting entity to analyze the costs and benefits to it of (1) privatizing services and (2) continuing to provide the services using its employees. The analysis must examine (1) direct and indirect costs to



the state, excluding wages and benefits but including unemployment compensation costs resulting from the privatization, and gains or losses in state income or sales tax revenue and (2) the effect of the proposed privatization on the quality of services, public health and safety, and state residents who may use them.

The cost analysis must also show costs or penalties to the state if it prematurely terminates the contract.

Each contracting entity must submit its analysis to the state auditors for review and comments and to the secretary of the state, who must maintain copies of each proposed contract and analysis as public records.

### ***Notice to Union Representatives***

Not less than 60 days before soliciting bids for a privatization contract, the bill requires the contracting entity to notify the unions representing the employees who will be affected by it. If the contract would result in at least 100 layoffs, transfers, or reassignments, after consulting with unions, the entity must provide resources to encourage and help the affected employees bid on the contract. It must look at existing or similar collective bargaining agreements to determine how much help to give them. The bill requires contracting entities to also give the employees its cost-benefit analysis and the auditor's report. It must consider bids from its employees on the same basis as it considers others. It permits employees to bid as a joint venture with others.

### ***Bid Requirements***

The bill requires entities soliciting bids for privatization contracts to direct each bidder to include in his or her bid:

1. the established wage rate or annual salary for each employee or position the contract covers;
2. if he or she is a for-profit, his or her agreement to offer available employee positions to any qualified state employee who will

- lose his or her job because of the contract and who satisfies the bidder's hiring criteria;
3. his or her agreement to refrain from engaging in discriminatory employment practices and to take affirmative steps to be an equal opportunity employer;
  4. employees' annual turnover rates;
  5. any legal or administrative proceedings pending or concluded adversely against him or her or any of his or her principals or key personnel within the past five years that relate to the procurement or performance of any public or private construction contract, employee safety and health, labor relations, or other employment requirements, and whether the applicant is aware of any investigation pending against him or her or any principal or key personnel;
  6. for any such proceeding, the date of the complaint, citation, or court or administrative finding; the enforcement agency, rule, law, or regulation involved; and any additional information he or she elects to submit; and
  7. any collective bargaining agreements or personnel policies covering the employees who will provide services to the state.

### ***Wage Requirements***

The bill requires all privatization contracts to be acceptable to the bidder and the contracting entity. These contracts must include the costs to the state to pay the minimum wage rate specified below. Contracts with nonprofit human services providers must include 20% of the contract's value for administrative costs and up to an additional 40% for providing higher wages or salaries to employees who are not entry level or who have additional needed skills. However, the amount the state provides a contractor for wages, benefits, and administrative costs for a contract renewal, modification, extension, or rebidding cannot be increased by more than 10% per year unless

additional increases are required by state or federal law or by the provisions of a collective bargaining agreement.

At a minimum, these contracts must also:

1. require the bidder to offer available jobs to qualified regular state employees who lost their job because of the contract and who satisfy the hiring criteria;
2. prohibit the bidder from engaging in discriminatory employment practices and require him or her to take affirmative steps to offer everyone an equal opportunity;
3. require the bidder to allow the state auditors to conduct periodic performance audits of the contract; and
4. require the bidder to pay a minimum wage rate equal to the established wage rate (i.e., a minimum wage rate for employee positions with duties substantially similar to the duties performed by a regular agency, which rate is the lesser of step one of the grade or classification under which the comparable regular agency employee is paid, or the standard private sector wage rate for the position as determined by the labor commissioner).

In addition, the contract cannot take effect until the contractor and contracting entity have complied with the bill's provisions on privatization.

***Duty Once a Privatization Contract is Signed***

If the contracting entity signs a privatization contract, it must give the secretary of the state:

1. a copy of the contract to maintain as a public document,
2. a certification that the entity complied with all of the bill's requirements for privatization;

3. a copy of the cost-benefit analysis and report explaining any changes in the analysis resulting from the terms of the proposed contract;
4. an analysis of the quality of services the contractor will provide and whether they are equal to or exceed the quality provided by the entity's regular employees;
5. a certification by the contractor that he or she and his or her supervisory employees have no adjudicated record of repeated willful noncompliance with any relevant federal or state regulatory laws, including laws concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest; and
6. a description of why the proposed contract is in the public interest.

### ***Lawsuits Challenging Contract Compliance***

Under the bill, an employee adversely affected by a proposed privatization contract or his or her collective bargaining agent may file a motion for an order to show cause in Hartford Superior Court claiming that the contract fails to comply with this section's substantive or procedural requirements. The court may (1) deny the motion if it finds that all requirements were met, (2) grant the motion if it finds that the proposed contract would substantively violate the bill, or (3) stay the contract's effective date until any procedural or substantive defects are corrected.

### **§ 16 — JUDICIAL BRANCH PROCUREMENT CODE**

By January 1, 2009, the bill requires the Judicial Branch to prepare a procurement code for its use when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies, equipment, or services, including consultant and construction services. This code must be identical to the SCSB's procurement code, except the Judicial Branch's code does not have to:

1. preserve and maintain contracting or procurement procedures that represent best practices,
2. establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate, or
3. include standards for evaluating proposals to privatize services and privatization contract bid proposals.

By February 1, 2008, the bill requires the Judicial Branch to submit the code to the Judiciary Committee for approval.

## **§ 20 — STATE CONTRACTING OPPORTUNITIES**

The bill requires DAS to work with the SCSB to establish and maintain on its website a single electronic portal of all contracting opportunities with Executive Branch state agencies, the constituent units of higher education, and quasi-public agencies.

The state contracting portal must at least include:

1. all requests for bids or proposals, other solicitations, related material, and all resulting contracts and agreements;
2. a searchable database for locating information;
3. personal service agreements and purchase of service contracts;
4. any document DAS designates that describes approved contracting processes and procedures; and
5. prominent features to encourage small businesses and women- and minority-owned enterprises to participate in the state contracting process.

All Executive Branch agencies, constituent units of higher education, and quasi-public agencies must (1) post all bids, requests for proposals, and all resulting contracts and agreements on the portal and (2) develop written policies and procedures to ensure that information posted on the portal is timely, complete, and accurate as

determined by the highest legal and ethical standards of state government. They must, with the assistance of DAS and the Department of Information Technology as needed, develop the infrastructure and capability to communicate electronically with the portal.

DAS must give the governor and the SCSB periodic progress reports on (1) the agencies' and units' development of the capacity, infrastructure, policies, and procedures necessary to communicate electronically with the portal and (2) DAS' progress in establishing and maintaining the portal.

### **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 9      Nay 4      (03/30/2007)